

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 63 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes

2. To be referred to the Reporter or not? Yes

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3. Whether Their Lordships wish to see the fair copy
of the judgement? No

4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge?
No

SITABEN M THAKORE

Versus

COMMISSIONER OF POLICE

Appearance:

MR NM KAPADIA for Petitioner

MR UA TRIVEDI, APP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 10/12/96

ORAL JUDGEMENT

1. The petitioner's husband Shri Mangaji Chanduji Thakore is under externment order dated 13/07/1995 passed by the Deputy Commissioner of Police (Administration) Ahmedabad city. The said order has been confirmed in appeal by the order of the Deputy Secretary, Home Department (Special), dated 05/01/1996. The impugned order of externment dated 13/07/1995 is preceded by notice under section 59(1)(d) of the Bombay Police Act,

1951 (hereinafter referred to as 'the Act of 1951'), dated 25/02/1996. It is alleged that the externee is running a den to sell illicit liquor. The notice refers to the activities of the externee which according to the detaining authority amounts petitioner being of ferocious nature, head strong as well as in general, of a dangerous person. He has resorted to several acts whereby the people of the areas of Swastik Char Rasta Bus Stand, Panjarapole, Law Garden, Girish Cold Drinks, Commerce Six Roads, Vijay Char Rasta, Dada Saheb Pagala, Navarangpura Bus Stand etc, all falling within the area of Navrangpura police station, have been terrorised.

2. The order of externment is challenged on numerous grounds, one of which press into service that there is delay in passing the order of externment which has snapped the live-link between the past acts committed and the impugned order of externment.

3. Mr Kapadia, learned counsel appearing for the petitioner has contended that the acts referred to in the notice pertain to prior to February 25, 1994 and the impugned notice of externment has been passed on July 13, 1995. Thus, there is a time gap of about 1 year and 5 months. This also leads to the inference that the ground has become stale. It is therefore contended that the order is vitiated because of such delay and the order is therefore liable to be quashed and set aside.

4. On the other hand, it is contended by Mr UA Trivedi, ld. APP that, in fact, no delay can be spelled out from the facts and circumstances of the case and that, if at all any delay is demonstrated by the facts of the case, the same was entirely due to the externee himself and that, therefore, the externee cannot be permitted to have the benefit of all what he had done for prolonging the proceedings.

5. Mr V.K.Mall, District Superintendent of Police, Mehsana has filed an affidavit explaining the delay. It is stated that show cause notice u/s 59 of the Act was issued on 25/02/1994 by the Assistant Commissioner of Police, "H" Division, Ahmedabad. The said notice was served on the externee on 08/03/1994. The externee took one month in replying the show cause notice, as the same was submitted through his advocate on 06/04/1994. Thereafter, on several occasions, externee or his advocate has asked for adjournments and keeping in view the principles of audi alterem partem in mind, the externee was granted accommodation by adjourning the proceedings. The statements of the witnesses were

recorded by the Assistant Commissioner of Police on different dates viz. 26/04/94, 01/06/94, 18/06/94, 06/10/94, 20/10/94, 21/11/94 and 25/11/94. The witnesses were cross examined by the Assistant Commissioner of Police. The externee filed further statement on 27/07/94. The A.C.P. heard the counsel for the externee on 19/12/94 and submitted the entire proceedings to him on 19/01/1995. The externee remained present before him on January 30, 1995, as directed by the A.C.P. However, he sought adjournment which was granted for 9/2/94. On 9/2/94, an application for adjournment was preferred by the advocate of the externee on the ground that he had gone out of station for attending wedding ceremony and he could not make written submissions and therefore, the proceedings were again adjourned to 18/02/95. On the said day i.e. 18/2/95, neither the externee nor his advocate were present. Thus, the proceedings were adjourned to 28/02/95. Again on the said date, externee moved an application for adjournment on the ground of attending some marriage ceremony which was granted and the matter was posted on 07/03/95. On March 20, 1995, advocate for the externee filed an application stating inter alia that the externee did not remember the date of proceedings and therefore, he could not remain present on 07/03/1995. The proceedings were accordingly adjourned to April 07, 1995. Again, the adjournment was sought on 07/04/95 and the next date 12/05/95d was fixed on the ground that the lawyer was busy in the marriage ceremony of his relative. The proceedings were therefore adjourned to May 22, 1995. The externee thereafter filed a written submissions through his counsel. On these facts, it is stated that the externee alone is responsible for the delay.

6. It is also stated that, during the pendency of the proceedings, the petitioner also committed some more offence. The externee was detained under the PASA Act by order dated 14/09/1995. The said order was quashed by order of this Court dated 19/12/1995.

7. Thus, on the facts of the case, the question arises for consideration is whether the delay in the present case vitiate the order of externment or not.

8. Section - 56 of the Bombay Police Act empowers the authority empowered by the State Government to pass an order for removal of a person on the satisfaction that:- (a) the movements or acts of any person are causing or calculated to cause alarm, danger or harm to person or property, or (b) that there are reasonable grounds for believing that such person is engaged or is about to be engaged in the commission of an offence

involving force or violence or an offence punishable under Chapter XII, XVI or XVII of the Indian Penal Code, or in the abetment of any such offence, and when in the opinion of such officer witnesses are not willing to come forward to give evidence in public against such person by reason of apprehension on their part as regard the safety of their person or the property, or (c) that an outbreak of epidemic disease is likely to result from the continued residence of an immigrant.

9. On the reading of the aforesaid provisions, it is clear that, on reasonable grounds for believing that the person is engaged or about to be engaged in the commission of offence and further the witnesses are not willing to come forward is the important consideration for the purpose of passing an order under section 56. The words in the section 'is engaged or is about to be engaged' refers to the present activity and continued one. It does not refer to a matter of past, meaning thereby that on finding that the activity of the person, the action arose as to what is the immediate near. The question may again arise as to what is the immediate near. If a person is directed or is required to be prevented from committing acts of violence which he alleged to be repeatedly doing so, then the 'immediate near' would mean, 'within reasonable time.' Such reasonable time cannot be the long period of six months or one year.

10. In an unreported judgement of Division Bench of this Court (Coram : K.J.Vaidhya and S.D.Dave, JJ) being Special Civil Application No. 1295/94 decided on 24/01/1995, 'reasonable period' has been indicated as of 'six months'. In the said case, the externee was found to be guilty for delay in externment proceedings, but still the Court observed as follows :

"The idea behind the concept appears to be a two fold one: firstly, send out a man who is engaged in antisocial activities in a particular area, and secondly: save the area and the people residing therein from a person and his illegal activities. The whole idea is to destroy an established net work which an under world element has been able to create in a particular locality. This very idea have revolving around the above said provisions of Bombay Police Act, 1951, makes it obligatory that the whole exercise must be done as expeditiously as possible and within a reasonable time frame."

Thus, whosoever may be the responsible whether the externee or the authority for delay of the proceedings, the very purpose of the exercise of powers under section 58 are frustrated if the same is not exercised within a 'reasonable period', because the grounds which existed for externment which required an immediate action, cannot be said to have continued for a long period.

11. It is ofcourse true that, before passing the order of externment, it is necessary to follow the rule of natural justice. But, it cannot be unnaturally expanded. These proceedings are of summary nature and required to be regulated with care and caution by the concerned authorities. The compliance of the natural justice also depends upon the degree of urgency. In *Swadeshi Cotton Mill v. Union of India* reported in AIR 1981 SC 818, the Supreme Court has observed thus :-

"The audi alteram partem rule, as already pointed out, is a very flexible, malleable and adaptable concept of natural justice. To adjust and harmonise the need for speed and obligation to act fairly, it can be modified and the measure of its application cut short in reasonable proportion to the exigencies of the situation. Thus, in the ultimate analysis, the question (as to what extent and in what measure) this rule of fair hearing will apply at the pre-decisional stage will depend upon the degree of urgency, if any, evident from the facts and circumstances of the particular case."

12. In *Board of Mining Examination v. Ramjee* reported in AIR 1977 SC 965, the Supreme Court has observed that the natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. The Court further held that unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating.

13. Thus, the inquiry u/s 59 of the Act, being of urgent nature should be held as expeditiously as possible, and in particular, only a short notice of 3 to 7 days may be given for submitting the written statement, and immediately the date should be fixed for examination

of witnesses, and once examination of witnesses begun, the same should be continued, unless the authority finds the adjournment of the same beyond the following day to be necessary for the reasons to be recorded. It is not necessary to record each and everything whatever being stated, if in the opinion of the authority, the same is not relevant. No adjournments should be granted on the flimsy grounds of the lawyer or the externnee is busy in attending the marriage or that the advocate is busy in other court matters. These are not the grounds for adjournment. Though in the Division Bench judgement, it is expressed that the enquiry should be completed within a period of six months, it only provides an outer limit in extreme cases. No definite period of inquiry can be provided. It depends upon the facts of each case. If there is an long delay in passing the orders of externment after the issuance of show cause notice, the externment authority cannot reasonably come to conclusion that the movement or the acts of the externnee are causing or calculated to cause alarm, danger or harm to person or property, so as to prevent him to moving himself from certain areas.

14. In the instant case, the show cause notice was issued on 25/02/1994 and externment order was passed on 13/07/1995 i.e. after a long delay of 1 year and 4 months. Even if A.G.P. succeeds in convincing this Court that the delay was on account of externnee, it cannot be denied that the authority holding the enquiry failed to regulate the proceedings in true spirit of the provisions of section 59 of the Act. The long delay on the fact present case alone is sufficient to vitiate the impugned order of externment.

15. In view of the aforesaid, this Special Criminal Application is allowed. The impugned order of externment dated 13/07/95 and the order of confirmation passed in appeal by the appellate authority are quashed and set aside. Rule is made absolute.

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